

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application Of:

William J. Rea, MD et al

Attorney Docket: 16715CIPCPA

Serial No.: 08/902,692

Group Art Unit: 1644

Filed: July 30, 1997

Examiner: Schwadron, R.

For:

**AUTOGENOUS LYMPHATIC FACTOR FOR
MODIFICATION OF T AND B LYMPHOCYTE PARAMETERS**

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

Third Status Letter and Request for Substantive Action

This is a third status letter regarding this application. Applicants recognize that this is a busy Group within the Office but we have not received any substantive action from the PTO since February 21, 2002, which was three years ago. Applicants respectfully request an update on the status of their application and a substantive response from the Office. In support of this request, Applicants show the following:

In response to the Advisory Action mailed February 21, 2002, Applicants timely filed a Notice of Appeal on April 25, 2002.

On May 21, 2002, the Office mailed an erroneous "Notice of Abandonment." On June 12, 2002, Applicants filed a "Request to Withdraw Notice of Abandonment." On October 8, 2002, the Office mailed a Notice that the "Notice of Abandonment mailed 5-21-03 has been withdrawn."

On October 24, 2002, Applicants filed a "Brief for Appellants."

On January 8, 2003, the Office mailed a "Notification of Non-Compliance With 37 CFR 1.192(c) based on a technicality in the wording of the "Status of Claims." Correction was required because all of Claims 1-48 had not been previously "canceled," rather, some had been "withdrawn."

On January 27, 2003, Applicants filed a "Corrected Brief for Appellants," which under the "Status of Claims" corrected that certain claims had been previously "canceled" whereas others had actually been "withdrawn."

On July 7, 2003, the Office mailed a second "Notification of Non-Compliance with 37 CFR 1.192(c) on entirely different grounds than the first notice, stating that "the Brief does not indicate why claims 49-51, 55-59, 65 stand and fall together separately from claims 52-54, 60-64, 66."

On August 4, 2003, Applicants filed a "Response to Notice of Non-Compliance With 37 CFR 1.192(c)," traversing the newly stated ground of non-compliance in the second Notice, pointing out that in the Brief, under the heading "Claims 52-54, 60-64, and 66 Are Separately Patentable and Not Obvious," pp. 19-20, the Brief argues that these claims, i.e., the claims of Group II, are patentable for all the same reasons discussed by Group I and are further separately patentable for an additional reason. The Brief goes on to provide that additional reason.

On July 30, 2004, Applicants filed a "Status Report," requesting an update on the progress of their appeal.

On November 8, 2004, Applicants filed a second "Status Report," requesting an update on the progress of their application.

On February 18, 2005, Applicants' attorney called the Examiner directly and left a voice mail regarding the application. Applicants' attorney also called the PTO Help Desk for information regarding the status of this application, and learned that the PTO did not have computer record of the August 4, 2003 Response. The Help Desk noted, however, that the application had not been held abandoned for any failure to respond to the July 7, 2003 Notification, and the PTO did have computer records of the July 30, 2004 and November 8, 2005 correspondence from Applicants.

Out of an abundance of caution, Applicants are re-submitting herewith their Response filed on August 4, 2003, including a copy of the official postcard receipt back from the USPTO received on August 11, 2003.

Applicants are again requesting an update on the status of their application, and in view of the long time that has passed, substantive action on the merits of this application.

Dated: February 18, 2005

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail to: MAIL STOP APPEAL BRIEF - PATENTS, COMMISSIONER FOR PATENTS, P. O. BOX 1450, ALEXANDRIA, VA 22313-1450 on:

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Name of Applicant, Assignee or Registered Representative

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February 18, 2005

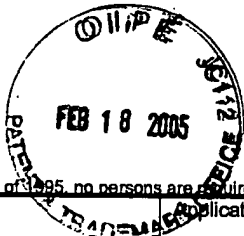
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Respectfully submitted,



Todd E. Albanesi, Reg. No. 36,426
CRUTSINGER & BOOTH, LLC
1601 Elm Street, Suite 1950
Dallas, Texas 75201-4744
(214) 220-0444; Fax (214) 220-0445

Attorneys for Applicants



PTO/SB/21 (05-03)

Approved for use through 04/30/2003. OMB 0651-0031

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**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Application Number	08/902,692
Filing Date	07/30/1997
First Named Inventor	William J. Rea, MD, et al.
Art Unit	1644
Examiner Name	Schwadron, R.
Attorney Docket Number	16715/CIP
Total Number of Pages in This Submission	3

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
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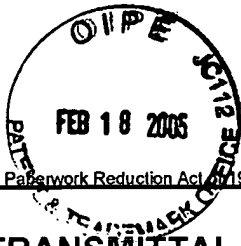
Firm or Individual name	Crutsinger & Booth by Todd E. Albanesi
Signature	<i>Todd E. Albanesi</i>
Date	August 4, 2003

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Typed or printed name	Virginia Born		
Signature	<i>Virginia Born</i>	Date	August 4, 2003

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	CRUTSINGER & BOOTH, LLC by Todd E. Albanesi		
Signature	<i>Todd E. Albanesi</i>		
Printed name	Todd E. Albanesi		
Date	February 18, 2005	Reg. No.	36,426

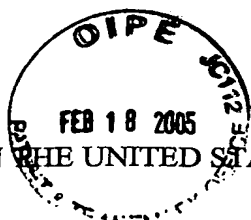
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Signature	<i>Virginia A. Born</i>		
Typed or printed name	Virginia Born	Date	February 18, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Examiner: Schwadron, R.

For: **AUTOGENOUS LYMPHATIC FACTOR FOR
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RESPONSE TO NOTICE OF NON-COMPLIANCE WITH 37 CFR 1.192(c)

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The Notice of Non-Compliance with 37 CFR 1.192(c) mailed July 2, 2003 is the second such Notice, but it states entirely different grounds than in the first Notice mailed January 8, 2002.

The second Notice now states, "Regarding point 6, the Brief does not indicate why claims 49-51, 55-59, 65 [Group I] stand and fall together separately from claims 52-54, 60-64, and 66 [Group II]." Appellants respectfully traverse.

In the Brief, under the heading "Grouping of Claims," pp. 4-6, the Brief identifies four separate groups of claims, and explains the broad differences between the claims and why they are so grouped, including the differences between Groups I and II regarding the rejection under 35 U.S.C. 103(a).

In the Brief, under the subheading "Impasse and Issues on Appeal," pp. 16-17, the Brief identifies that the Examiner has finally rejected all the "Claims 49-66 under 35 U.S.C. § 103(a) as being obvious over Youdim et al. in view of Warren (U.S. Patent No. 4,435,384)."

In the Brief, under the heading "Claims 49-66 Are Not Obvious Over Youdim et al. in view of Warren," pp. 17-19, the Brief argues for the patentability of all of these claims, represented by Group I.

In the Brief, under the heading "Claims 52-54, 60-64, and 66 Are Separately Patentable and Not Obvious," pp. 19-20, the Brief argues that these claims, i.e., the claims of Group II, are patentable for all of the same reasons discussed under the preceding heading represented by Group I and are further separately patentable for an additional reason.

Appellants' Brief complies with 37 CFR 1.192(c).

DATED: August 4, 2003

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Respectfully submitted,



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Attorneys for Applicant



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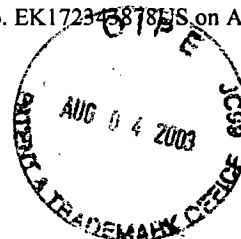
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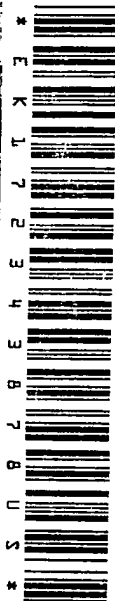
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Application of: William J. Rea, MD, et al. **DOCKET NO.** EHCD-3-P-16,715/CPA2
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